REMARKS

Status of and Amendment to the Claims

Claims 1,2, 8, 9, and 41 through 48 are pending in the present application. Claims 41 through 48 are newly presented claims. Claims 3 through 7 and Claims 10 through 40 have been canceled.

Claim Rejections – 35 U.S.C. § 112, second paragraph

By this reply, Claim 3 has been canceled which obviates the present 35 U.S.C. § 112, second paragraph rejection for such claim. In regards to Claim 8, Applicant respectfully disagrees with the Office's assertion that "the group consisting of" lacks proper antecedent basis. As stated in MPEP Section 2173(h)I, a proper Markush group includes the wording "wherein R is a material selected from the group consisting of A, B, C and D." Presently, Claim 8 includes the limitation "the nail gun is selected from the group consisting of a spring-loaded nail gun, a pneumatic nail gun, an electro-magnetic nail gun, a combustion nail gun, and a motor driven nail gun." Thus, Claim 8 is a proper Markush group. Therefore, removal of the pending rejection under 35 U.S.C. §112, second paragraph for Claim 8 is respectfully requested and allowance is solicited.

Claim Rejections – 35 U.S.C. § 102

35 U.S.C. § 102(b)

Claims 1, 2, 8, and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,971,421 by Damratowski (hereinafter referred to as Damratowski). Applicant respectfully traverses. Claim 1 from which 2, 8, and 9 depend includes the limitation of "the nail loading assembly" and "a nail" which are not taught by Damratowski. As the Office is well aware:

> In order to prove a *prima facie* case of anticipation, "a single prior source must generally contain all of the essential elements of the claim." *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, "the prior art reference must disclose each element of the claimed invention arranged as in the claim." *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485

(Fed. Cir. 1984) (citing *Connell v Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Damratowski teaches a canister style loading assembly for a screw, not a "nail loading assembly" for "a nail." Therefore, a *prima facie* case of anticipation has not been established. Applicant respectfully requests the removal of the pending 35 U.S.C. §102(b) and allowance is earnestly solicited.

Allowable Subject Matter

The Patent Office is thanked for the indication of allowable subject matter in Claims 3 through 7. Applicant wishes to seek expeditious issuance of a patent containing claims directed to subject matter found allowable by the Patent Office. Thus, as suggested by the Examiner, Claim 3 has been re-written in independent form which is now Claim 41. The allowable subject matter has been incorporated, as needed, into dependent Claims 42 through 48 such that Claims 41 through 48 contain allowable subject matter. However, Applicant does not acquiesce to the rejections of the original Claims 1, 2, 8, and 9 and respectfully requests the Office consider the remarks and arguments set forth in the present amendment.

CONCLUSION

In light of the foregoing amendments, reconsideration of all pending claims is requested and a Notice of Allowance is earnestly solicited.

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